(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

CRIMINAL MISCELLANEOUS APPLICATION NO. 259 OF 2003.

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. J.F. Melo, Advocate for the Applicant.

Mr. E.O. Mendes, Advocate for the Respondent No. 1.

Coram : P.V. HARDAS, J.

Date : 8th January 2004.

P.C.: This is an application filed by the original complainant challenging the Judgment of the learned Judicial Magistrate, First Class, Vasco da Gama, dated 20th December 2002, in Criminal Case No. 166/P/99/D, acquitting the respondent no. 1/accused for offences punishable under Sections 498-A, 506(ii) of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961.

2. The learned trial Court had held that the prosecution had not proved beyond reasonable doubt that the

respondent no. 1/accused had subjected the complainant to cruelty by causing harassment with an intent to coerce her and her parents to meet the unlawful demand of Rs. 7 lakhs. The learned trial Court also held that the prosecution had not been able to prove the ingredients in respect of the offences of Section 506(ii) of the Indian Penal Code as well as Section 4 of the Dowry Prohibition Act. Insofar as the offence under Section 4 of the Dowry Prohibition Act is concerned, the learned trial Court came to the conclusion that, since the alleged demand for dowry was made after the marriage, the said provision was not attracted. Obviously, in this regard, the attention of the learned trial Court was not invited to Section 2, which defines 'dowry', which also includes a demand made any time after the marriage. In this regard P.W.1 has stated that the accused had demanded an amount of Rs. 7 lakhs for the first time

in the month of June 1997 and the accused kept on asking thereafter and in August 1999 there was a quarrel. The prosecution has also examined P.W.2 Janet D'Souza, who only makes a vague statement that the accused used to always assault the complainant and demand money. The prosecution has also examined P.W.3 Edward Fernandes, who again makes a vague statement that the accused was demanding dowry from the complainant. This witness had admitted in the cross-examination that it was the complainant who had informed him that she was harassed for dowry.

3. In the background of the evidence tendered by the prosecution, I find that the evidence, in respect of the demand for dowry, is wholly insufficient to prove beyond reasonable doubt the commission of the offence under the Dowry Prohibition Act. In respect of the offence under Section 506(ii)

of the Indian Penal Code, the learned trial Court has found that the evidence of the prosecution witnesses was not consistent and that a charge under Section 506 of the Indian Penal Code had been made only with an ulterior motive to harass the accused. In respect of the offence punishable under Section 498-A of the Indian Penal Code, the learned trial Court found that there were several contradictions in the evidence of the prosecution witnesses and thus, ultimately, the learned trial Court acquitted the respondent no. 1/accused. Record and Proceedings had been called for and after perusal thereof, the view taken by the learned trial Court appears to be a possible view on the basis of the evidence on record.

4. In such circumstances, Criminal Miscellaneous Application is dismissed. Leave is refused.

ed's. P.V. HARDAS, J.